THE HONOURABLE SRI JUSTICE C.V. NAGARJUNA REDDY

W.P. NO. 11469 of 1996

DATED: 24.01.2007

Between:-

Smt. T. Shanta, Junior Assistant, Sarojini Naidu, Vanita Maha Vidyalaya, Exhibition Grounds, Hyderabad.

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PETITIONER

And

Sarojini Naidu Vanita Maha Vidyalaya, Exhibition Grounds,
Hyderabad, represented by its Correspondent and
2 others.

.RESPONDENTS

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O R D E R

The petitioner was temporarily appointed as Lower Division Clerk (redesignated as Junior Assistant) on 27.01.1976 with effect from 17.01.1976 to cope up with the extra work in the office of the first respondent-Educational Institution. Initially, the petitioner was paid a consolidated pay of Rs. 150/- and subsequently it was increased to Rs. 250/- per month during the period from 03.01.1978 to 31.03.1979. The petitioner was temporarily promoted to the aided post of L.D.C. from 04.12.1978 to 11.01.1979 in the leave vacancy of Smt. Aijaz Sultana. The petitioner was later given the scale of Rs. 250-430 plus admissible allowances with effect from 01.04.1979 by an order dated 28.04.1979.

The grievance of the petitioner is that though the pay scales to other employees were subsequently revised in the year 1986 and 1993, she was denied the revision of pay scales. According to the petitioner, under Rule 7(4) of the Andhra Pradesh Educational Institutions (Establishment, Regulation, Administration and Control of Institution of High Education) Rules, 1987 (for short 'the Rules'), the management of the college shall pay

salaries to the staff as per the Government Scales of Pay.

As the petitioner's services were not regularized and the pay scales were not revised, she filed W.P. No. 12457 of 1993 in this Court, *inter alia*, seeking the relief of regularization of her services in the post of Junior Assistant with effect from 17.01.1976 giving her Special Grade Post on completion of 10 years of service as Junior Assistant and Special Promotion Post on completion of 15 years of service apart from payment of salary and other allowances due to her in the respective posts as revised from time to time by the Government as per the revision of pay scales. A learned Single Judge allowed the writ petition by giving the following relief.

> "In the circumstances, a writ of Mandamus shall issue directing the first respondent to pay the petitioner the salary and the emoluments due in accordance with the said Rule 7 (4) after taking into account G.O.Ms.No.117, dated 25.5.1981 and to the third and fourth respondents to regularize and grant the grant-in-aid in response to the letter dated 16.07.1991 in accordance with law and regulations applicable."

The respondents 3 and 4 filed Writ Appeal No. 1160 of 1995 against the said judgment. A Division Bench of this Court dismissed the said Writ Appeal by its order dated 10.10.1995. Thus, the order of the learned Single Judge was confirmed in the writ appeal. Following the dismissal of the writ appeal, the 3rd respondent issued G.O.Rt. No. 2466, dated 12.10.1995. Para-3 of the G.O. reads as under.

> "In accordance of the directions of Hon'ble High Court, "to regularize and grant the grant-in-aid in response to the letter dated 16.07.1991, in accordance with law and regulations applicable", the Government after careful consideration of the letter of Secretary & Correspondent of the said college, direct the Commissioner of Collegiate Education to regularize the services of Smt. T. Shantha, Junior Assistant of S.N. Vanitha Maha Vidyalaya, Hyderabad, and admit her to grant-in-aid with effect from 19.04.1994 i.e, the date of judgment of the Hon'ble High Court."

To the extent the petitioner was denied regularization with effect from 16.07.1991, the petitioner has challenged the said G.O. in the present writ petition. The petitioner also sought for payment of regular pay scale by the 1st respondent from the time of her joining in employment till 16-7-1991.

A counter affidavit is filed by Sri A. Srinivasa Rao, Joint Director of Collegiate Education working in the office of the second respondent. It is mentioned *inter alia* in the counter affidavit that the petitioner was appointed as Junior Assistant (unaided) in the Educational Institution run by the first respondent over and above the cadre strength prescribed in the Directors proceedings Rc. No. 203/D3/93, dated 26.06.1965 for Private Aided Colleges. As the petitioner was working in unaided post, the management has to pay the petitioner the salary, pay revision etc., and that the Department has nothing to do with the unaided staff appointed by

the management. Since the petitioner's appointment was in excess of cadre strength, in the proceedings dated 04.01.1991 issued by the second respondent it was informed that the petitioner cannot be admitted to Grant-In-Aid. It is further stated that the petitioner was admitted to Grant-In-Aid with effect from 19.04.1994 in view of the orders passed by this Court in the Writ Petition and Writ Appeal, to which reference was earlier made. It is further mentioned that a supernunary post was created in the first respondent-college to accommodate the petitioner as Junior Assistant in order to implement the said judgments of this Court and that no employee has any vested right to be admitted to Grant-In-Aid with effect from any specified date. It is also averred in the counter affidavit that several Government Orders on which the petitioner placed reliance have no application to the present case as those orders deal with the cases where the appointments made irregularly were subsequently ratified and admitted to Grant-In-Aid. Since the petitioner was working in an unaided non-existing post, she cannot claim the benefit of the said Government Orders.

Heard Sri K. Harniath, learned counsel appearing for the petitioner and Smt. K. Neeraja Sudhakar Reddy, learned Government Pleader for Higher Education. No one appeared for the first respondent.

Sri K. Harinath, learned counsel for the petitioner submitted that the order dated 19.04.1994 passed in W.P. No. 12457 of 1993 clearly directed the respondents

2 and 3 to regularize the petitioner's services and admit her post to grant the Grant-In-Aid from 16.07.1991 and the proceedings of the third respondent dated 12.10.1995 denied the petitioner the benefit of regularization from 16.07.1991, and that instead the petitioner's services were regularized only from 19.04.1994. This, learned counsel submits, is patently contrary to the order of this Court in W.P. No. 12457 of 1993.

Per contra, learned Government Pleader for Higher Education submitted that there is no direction given in the order of this Court as to the date with effect from which the petitioner is entitled to be regularized. Learned Government Pleader submits that, but for the order of this Court in the earlier round of litigation, the petitioner would not have been entitled to any regularization at all. The basis of the submission of the learned Government Pleader is that since the petitioner is appointed over and above the sanctioned cadre strength, in normal course she would not have been entitled to regularization and admitted to Grant-In-Aid. In obedience to the orders of this Court, 3rd respondent issued the proceedings directing the petitioner's regularization and her admission to Grant-In-Aid with effect from 19.04.1994, the date on which the writ petition was allowed by the learned Single Judge. Hence, according to the learned Government Pleader, the proceedings impugned in this writ petition do not suffer from any illegality.

It is not in dispute that the petitioner was appointed over and above the sanctioned cadre strength. However, having regard to the facts and circumstances mentioned in the order, the learned Single Judge in W.P. No. 12457 of 1993, directed the respondents to regularize the petitioner's services. It is significant to notice that the said order does not contain a specific direction as to the date with effect from which the petitioner is entitled to regularization. The contention of the learned counsel for the petitioner is that since the first respondent-college has sent its proposals on 16.07.1991 to the Director of Collegiate Education, the petitioner is entitled to regularization of her services with effect from that date. He has also further submitted that as the learned Single Judge has directed to consider her regularization in response to the management's letter dated 16.07.1991, it necessarily follows that the 3rd respondent is under obligation to regularize the petitioner's services with effect from the said date. I am not inclined to accept this contention of the learned counsel for the petitioner. Learned counsel for the petitioner fairly admits that, dehors the orders of this Court, the petitioner does not have any statutory right to insist that she is entitled to regularization with effect from any particular date. The reference to the letter of the first respondent dated 16.07.1991 made in the order of the learned Single Judge in W.P. No. 12457 of 1993 cannot be treated as a direction given to the respondents 2 and 3 to regularize her services from

16.07.1991. In the absence of any statutory provision by which the petitioner is entitled to regularization with effect from a particular date, the 3rd respondent has chosen the date of disposal of the writ petition as the date for regularization of the petitioner's services. I do not therefore see any illegality or arbitrariness in the decision taken by the 3rd respondent to regularize the petitioner's services with effect from 19.04.1994. It is not disputed that until the services of the petitioner are regularized, she cannot be admitted to Grant-In-Aid. Therefore, the decision of 3rd respondent to admit the petitioner to Grant-In-Aid with effect from the date of her regularization does not suffer from any error either. Under these circumstances, I do not see any error in the proceedings impugned in this writ petition.

Learned counsel for the petitioner, however, argued that as regards the payment of salary, under Rule 7 (4) of the Rules, the first respondent-institution is bound to pay the same with effect from 17.01.1976. This contention, in my view, is not sustainable. Though the petitioner claimed this relief in W.P. No. 12457 of 1993, this Court has not granted the petitioner the said relief and instead, the respondents were directed to consider her case. As the petitioner failed to persuade this Court to grant positive direction for payment of salary with effect from 17.01.1976 in the earlier writ petition, no such relief can be granted in the present writ petition by operation of principle of *res judicata*.

For the foregoing reasons mentioned, the writ

petition is dismissed. No order as to costs.

C.V. NAGARJUNA

REDDY, J
24th January, 2007
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